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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems and) MM Docket No. 87-268
Their Impact Upon the Existing)
Television Broadcast Service)

To: The Commission

MOTION TO STRIKE

The University of Southern Colorado (the "University"), licensee of Television Station KTSC(TV), Pueblo, Colorado, by its attorney, hereby moves the Commission to strike the Comments filed by Pikes Peak Broadcasting Company ("Pikes Peak") on December 17, 1997 in the above-captioned proceeding. Pikes Peak's Comments are untimely, unauthorized and rife with factual inaccuracies. Its Comments should be dismissed forthwith.

I. Pikes Peak's Comments Are an Untimely and Unauthorized Petition for Reconsideration of the FCC's DTV Table of Allotments.

Pikes Peak's Comments are an untimely and unauthorized petition for reconsideration of the digital television ("DTV") Table of Allotments adopted by the FCC in its *Sixth Report and Order* in MM Docket No. 87-268.^{1/} In that decision, the FCC assigned KTSC(TV) DTV Channel 29 and a DTV transmitter site located on Cheyenne Mountain. Petitions for reconsideration of the decision were due on June 13, 1997. Pikes Peak did not request

^{1/} *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-268, (released Apr. 21, 1997) ("*Sixth Report and Order*").

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reconsideration of KTSC(TV)'s DTV allotment at that time nor in any of the six separate opportunities it has had since that date to comment on the DTV Table.^{2/} Now, six months later, and under the guise of responding to the Association for Maximum Service Television, Inc.'s ("MSTV") November 20, 1997 DTV submission, Pikes Peak requests reconsideration of the KTSC(TV) DTV allotment. Indeed, Pikes Peak's Comments refer to MSTV's submission only twice -- first, on page one to note that MSTV filed its submission and second, on page two to indicate that the Commission's "error" in the *Sixth Report and Order* with respect to KTSC(TV) was repeated by MSTV. Its Comments otherwise do not address any of MSTV's proposals or even attempt to relate those proposals to KTSC(TV).

As the Commission has recognized, broadcasters have had ample opportunity to review, comment on and respond to the DTV Table of Allotments. Pikes Peak's request for reconsideration of KTSC(TV)'s DTV allotment in this supplemental filing -- which was permitted solely to solicit comments on two discrete and unrelated DTV allotment proposals^{3/} -- is a gross abuse of FCC processes and must not be condoned. The University urges the FCC to strike Pikes Peak's Comments from the record.

^{2/} See *FCC Seeks Comment on Filings Addressing Digital TV Allotments*, Public Notice, issued Dec. 2, 1997.

^{3/} Id. ¶ 3. The notice also sought comment on a proposal by the Association of Local Television Stations, Inc. ("ALTV") to modify the operating parameters of certain stations assigned DTV channels in the UHF band. Pikes Peak's Comments do not refer ALTV's proposal.

II. Pikes Peak's Request for Reconsideration Is Based on Inaccurate Representations.

Aside from its serious procedural flaws, Pikes Peak's request for reconsideration of KTSC(TV)'s DTV allotment is based on wholly inaccurate information. Pikes Peak spills much of the ink in its pleading on the history of an intraband channel swap that the University and Sangre de Cristo Communications, Inc. ("SCC"), licensee of Television Station KOAA-TV, Pueblo, Colorado, had proposed for FCC approval in 1992. Given Pikes Peak's vehement opposition to the channel swap, it is difficult to understand how it can get the facts of the channel swap so wrong. The facts as they occurred, and not as Pikes Peak mischaracterizes them, do not warrant any change in KTSC(TV)'s DTV allotment.

Pikes Peak makes the absurd claim that KTSC(TV)'s construction permit for Cheyenne Mountain is no longer valid because "in granting the channel exchange, the Commission left University and [SCC] at their presently licensed transmitter sites" and that the University has abandoned its construction permit for the Cheyenne Mountain site. Pikes Peak Comments at 2. First, the Commission has not granted the channel exchange.^{4/} Second, the denial of the channel exchange had no effect on the validity of the Cheyenne Mountain construction permit nor has the University abandoned the permit. Nowhere in the joint petition for rulemaking in which the University and SCC sought approval of the swap or in any other pleading in that proceeding has the University stated it had abandoned the

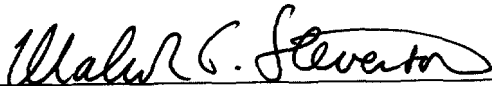
^{4/} The denial of the channel swap has been appealed by the University and SCC to the U.S. Court of Appeals for the D.C. Circuit. *Amendment of Section 73.606(b), Table of Allotments TV Broadcast Stations (Pueblo, Colorado)*, Memorandum Opinion and Order, 11 FCC Rcd 19649 (1996), on appeal, Sangre de Cristo Communications, Inc. v. FCC, No. 97-1030 (D.C. Cir. filed Jan. 15, 1997). Pikes Peak is an intervenor in this case.

Cheyenne Mountain permit. Moreover, that the University proposed to exchange its construction permit for SCC's licensed facilities does not signify an abandonment of the permit. The fact is the University still holds the Cheyenne Mountain permit and accordingly should be permitted to construct its DTV facilities at the Cheyenne Mountain site.

Pikes Peak's Comments contain gross inaccuracies and evidence total disregard for FCC procedural requirements. Accordingly, the FCC should strike Pikes Peak's Comments forthwith.

Respectfully submitted,

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January 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Motion to Strike" was sent on this 16 day of January, 1998, via first-class United States mail, postage-prepaid, to the following:

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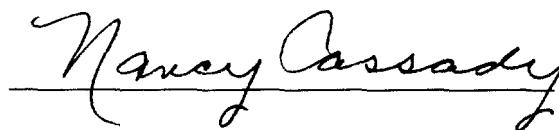
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